

The Honorable Karen A. Overstreet
Chapter 11
Hearing Location: 700 Stewart St., Rm. 7206
Hearing Date: November 17, 2010 (on shortened time)
Hearing Time: 9:30 a.m.
Response Date: November 17, 2010 (time of hearing)

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

In re
FREDERICK D. BERG,
Debtor.

In re
MERIDIAN TRANSPORTATION
RESOURCES, LLC, a Washington limited
liability company,
Debtor.

In re
MERIDIAN TRANSPORTATION
RESOURCES (CALIFORNIA), LLC,
Debtor.

In re
MERIDIAN TRANSPORTATION
RESOURCES (CANADA), Ltd.,
Debtor.

In re
MTR LEASING, LLC,
Debtor.

Lead Case No. 10-18668-KAO
(Administratively Consolidated with Case Nos.
10-23755-KAO, 10-23756-KAO, 10-23757-
KAO, 10-23759-KAO, 10-23761-KAO)

**DECLARATION OF ERIC ORSE IN
SUPPORT OF EX PARTE MOTION FOR AN
ORDER SHORTENING TIME TO HEAR:**

1. APPLICATION FOR ORDER TO PAY
PRE-PETITION WAGES, BENEFITS
AND WITHHOLDINGS
2. APPLICATION FOR ORDER
AUTHORIZING DEBTOR TO
MAINTAIN PRE-PETITION BANK
ACCOUNTS AND CASH
MANAGEMENT SYSTEM
3. EMERGENCY MOTION FOR
AUTHORITY TO OBTAIN CREDIT
4. MOTION FOR ORDER DIRECTING
APPOINTMENT OF CHAPTER 11
TRUSTEE

1 In re

2 GEOGENIUS, LLC,

3
4 Debtor.

5 I, Eric Orse, make the following declaration under penalty of perjury under the laws of the State
6 of Washington and the United States of America:

7 1. I am the financial advisor to Diana K. Carey ("**Berg Trustee**"), the duly appointed
8 Chapter 11 Trustee in the bankruptcy case of Frederick D. Berg, Case No. 10-18668-KAO. I am over
9 the age of 18, competent to testify to the matters herein, and otherwise make this declaration based on
10 my own personal knowledge or the records regularly kept in the ordinary course of the MTR Entities
11 (as defined below).

13 2. The Berg Trustee was appointed on August 19, 2010 and an order ratifying her control
14 of the MTR Entities (defined below) was entered on August 25, 2010.

15 3. The Berg Trustee has taken control of numerous entities formerly wholly owned
16 and controlled by Berg, including Meridian Transportation Resources, LLC ("**MTR**"), Meridian
17 Transportation Resources (California), LLC ("**MTR CA**"), Meridian Transportation Resources
18 (Canada), Ltd. ("**MTR Canada**"), MTR Leasing, LLC ("**MTR Leasing**"), and Geogenius, LLC
19 ("**Geogenius**") (each of MTR, MTR CA, MTR Canada, MTR Leasing, and Geogenius is referred to
20 herein as the "**MTR Entities**"). The MTR Entities maintain their corporate headquarters at 1501 Fourth
21 Avenue, Suite 1900, Seattle, Washington 98101.

24 4. The MTR Entities are related and doing business as "MTR Western," a luxury private
25 charter bus company operating in the western United States and Canada (a related Canadian affiliate is
26 not involved yet in this bankruptcy). Prior to Berg's bankruptcy filing, Berg engaged in various
27 activities that were detrimental to the continued success of the MTR Entities and the MTR Western
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1 business, which activities have been well documented in Berg's bankruptcy case and the related
2 "*Meridian Fund Cases*."

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4 5. In order to maximize the value of the assets of the Berg bankruptcy estate, the Berg
5 Trustee has sought to maintain the going-concern value of the MTR Entities and the MTR Western
6 business. The Berg Trustee has obtained offers from numerous parties for the MTR Entities and
7 believes that the best prospect for successfully selling such entities is through bankruptcy.

8
9 6. The primary assets of the MTR Entities are the motor coaches (the "***Motor Coaches***")
10 (titled primarily under MTR Leasing). The Motor Coaches are largely financed by Wells Fargo
11 Equipment Financing Corp. ("***Wells***") and ABC Companies, Inc. and its affiliates (collectively,
12 "***ABC***"); although some of the Motor Coaches are subject to sale lease backs with an option to
13 repurchase. Since prior to and since the filing of the Berg bankruptcy case, the MTR Entities have had
14 serious issues keeping current with their obligations to Wells and ABC.

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16 7. The debt service to Wells is approximately \$65,000 per month on an overall obligation
17 of \$3,003,712.

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19 8. The lease obligations and debt service of the MTR Entities' to ABC is approximately
20 \$224,000 per month on an overall obligation of \$7,327,141 (which amount includes amount necessary
21 to exercise an option to purchase 20 Motor Coaches).

22
23 9. The MTR Entities also have real property leases in Los Angeles, San Francisco,
24 Portland, Federal Way, Seattle, Calgary, and Delta, B.C. The total monthly obligation is approximately
25 \$100,000.

26
27 10. The MTR Entities have additional supplier expenses (for items such as fuel and service)
28 of approximately \$190,000 per month.

1 11. A prompt reorganization or orderly sale of the assets is required in order to maintain the
2 value of the MTR Entities, for the benefit of their creditors, employees, and customers.

3 12. Wage Application. In an application filed concurrently with this Declaration, the MTR
4 Entities seek authority to pay the pre-petition payroll, benefits, and taxes, as well as pre-petition
5 contract amounts to certain of their employees, due as described in Exhibit A (summary of “*Unpaid*
6 *Payroll Expenses*”) in an amount not to exceed **\$246,000**.

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8 12.1. It is essential that the MTR Entities be allowed to meet their pre-petition payroll
9 obligations, and their failure to do so would jeopardize their ability to provide prospective customer
10 services. Accordingly, it is in the interest of the MTR Entities and the creditors of their estates for the
11 MTR Entities to retain their employees post-petition.

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13 12.2. The Unpaid Payroll Expenses are set forth in the attached Exhibit A, which
14 include wages, and various employee withholdings including IRA and/or 401(k) contributions, federal
15 taxes, insurance and etc. It is worth noting that prior to Berg’s bankruptcy filing in July 2010, various
16 current employees of the MTR Entities were employed by an affiliated company called Meridian
17 Partnership Management, Inc. (“MPM”). Various other affiliated entities also had employees and the
18 employee benefit plan for all affiliated companies’ employees (known as the “Meridian Group of
19 Companies”) under MPM. Since that time, the Berg Trustee has consolidated operations of the
20 Meridian Group of Companies so that only the MTR Entities and an affiliated company called Oergon
21 Coachways, Inc., have employees. Employee benefit plans for the employees of the MTR Entities
22 continue to be processed under MPM.

23 13. Cash Management Application. The MTR Entities maintain bank accounts (collectively
24 the “*Bank Accounts*”) with Commerce Bank of Washington, Wells Fargo, Bank of America, and
25 National Bank of Canada (collectively the “*Banks*”) which are listed and described below.
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Bank:	Account Holder:	Description of Account:	Account No.:
Commerce Bank of WA	MTR		***5948
Wells Fargo	MTR	Canadian Deposit Acct	*****6910
Wells Fargo	MTR		*****3246
Wells Fargo	MTR	Employee Trust Acct	*****6811
Wells Fargo	MTR	Cash Collateral Acct	*****7017
Commerce Bank of WA	MTR CA		***9234
Wells Fargo	MTR CA		*****5536
National Bank of Canada	MTR Canada	(U.S. Dollar Acct)	**-*97-68
National Bank of Canada	MTR Canada	(CDN Dollar Acct)	**-*36-23
Commerce Bank of WA	MTR Leasing		***3711
Bank of America	MTR	Cash Collateral Acct	****9804

13.1. The MTR Entities' operations require, among other things, controlling and accounting for their revenues. The existing cash management system assures prompt receipt and allocation of funds and the generation of timely and accurate financial information necessary to manage the MTR Entities' operations. Failure to preserve the cash management system, particularly at a time when the MTR Entities are subject to the operational dislocation attendant to their Chapter 11 filings, would disrupt the MTR Entities' ordinary and usual financial affairs, and would impair their opportunity for reorganization.

13.2. The Banks are believed to be authorized bankruptcy depositories and that they are, pursuant to the requirements of § 345(b) of the Bankruptcy Code, insured by a department, agency, or instrumentality of the United States, or backed by the full faith and credit of the United States (with the possible exception of the National Bank of Canada and Commerce Bank of Washington).

13.3. The MTR Entities propose to continue to use the Bank Accounts as Debtor-in-Possession Accounts. In order to maintain a distinction between checks that were issued pre-petition, and those issued post-petition, the MTR Entities will skip the at least 100 sequential check numbers, and start the new sequence on with the next check number that is a multiple of 100.

1 13.4. The MTR Entities have concurrently filed an application herein requesting entry
2 of an order (the “**Wage Order**”) authorizing them to pay all prepetition wages, salaries, commissions,
3 increases and related benefits, which were due, owing or accrued as of the Petition Date. Checks for
4 payroll and related benefits will be written on the existing Bank Accounts.
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6 14. Motion to Obtain Credit. The MTR Entities seek to obtain post-petition financing from
7 GTO, LLC (“**Secured Lender**”) in order to maintain operations of their business following filing.
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9 14.1. Without obtaining credit, the MTR Entities have no prospect for being able to
10 maintain their current operations through the end of the year. The Berg Trustee, her counsel, and I have
11 all sought to obtain credit from various sources and have not come across a source of funding
12 proposing better terms than the Secured Lender.

13 14.2. Attached as Exhibit B is a 13 week budget (the “**Budget**”) detailing the use of
14 funds proposed to be advanced under the credit agreement negotiated at arms’ length between the MTR
15 Entities and the Secured Lender.
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17 14.3. The MTR Entities propose to grant a super-priority claim, security interest, and
18 liens to the Secured Lender as consideration for the necessary funding. The security interests will not
19 be equal to or senior to any pre-petition liens (the credit agreement expressly provides that the liens of
20 Wells and ABC in the Motor Coaches are to be senior to the Secured Creditor’s lien in the same), and
21 the priority claim is permitted by applicable bankruptcy law.
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23 14.4. As the value of the MTR Entities as a going-concern exceeds their liquidation
24 value, the approval of the extension of credit will be in the best interest of the MTR Entities and the
25 creditors of their estates. The funds extended pursuant to the credit agreement will enable the MTR
26 Entities to maintain operations through the projected conclusion of their bankruptcy cases. The terms
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1 of the Financing Agreement represent an arms' length negotiation and the exercise of the business
2 judgment of the MTR Entities.

3 15. The MTR Entities have in excess of 350 creditors. As such it will be an extreme
4 administrative burden to (a) administer the cases separately, and (b) provide notice to all known
5 creditors regarding the first day motions.
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7 16. Appointment of Ch. 11 Trustee. Diana Carey, in her capacity as the Berg Trustee has
8 been able to bring in advisors (including myself) who, together with the current management team at
9 MTR Western, have kept the companies operating and not a single customer stranded to date. Ms.
10 Carey, as a result of the appointment as the Berg trustee, has also acted as the President and Manager of
11 all of the Berg entities since her appointment. Indeed, after conferring with the U.S. Trustee's Office,
12 which has indicated that Ms. Carey should be appointed trustee of the MTR Entities barring any client
13 conflicts, I believe that the appointment of Ms. Carey as Chapter 11 Trustee for the MTR Entities
14 would serve the best interests of all concerned parties.
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17 EXECUTED this 15th day of November 2010 at Seattle, WA.

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20 Eric D. Orse
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